

SEP 10 2008

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISIONDAVID J. MALAND, CLERK
BY
DEPUTY _____SHELLY GIESLER,
Plaintiff,

v.

RUIZ FOOD PRODUCTS, INC.,
Defendant.§
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§CIVIL ACTION NO. 4:08cv344
JURY**DEFENDANT'S NOTICE OF REMOVAL**

Defendant, Ruiz Food Products, Inc., files *Defendant's Notice of Removal* and would respectfully show the Court as follows:

I. STATE COURT ACTION

On August 5, 2008, Plaintiff Shelly Giesler commenced an action in the District Court of Grayson County, Texas, 59th Judicial District, Grayson County Justice Center, 200 S. Crockett, Suite 120A, Sherman, Texas, 75090, entitled *Shelly Giesler v. Ruiz Food Products, Inc.*, Cause No. 08-1257-059. A true and correct copy of all process and pleadings in that cause, are attached in Defendant's Appendix, as required by 28 U.S.C. §1446(a).

II. PARTIES & SERVICE

Defendant was served with process in the State Action on August 15, 2008. Therefore, this Notice of Removal is timely filed pursuant to 28 U.S.C. § 1446(b).

III. VENUE

Venue of the removed action is proper in this Court as it is the district and division embracing the place where the state action is pending.¹

¹ See 28 U.S.C. §1441(a).

IV. BASIS FOR REMOVAL – DIVERSITY OF CITIZENSHIP

The basis for this Court's jurisdiction and the removal of this case to this court is 28 U.S.C. § 1332 because there is complete diversity between the parties and the amount in controversy exceeds \$75,000, exclusive of interest, costs, and attorneys fees. Plaintiff, an individual, asserts that she resides in Oklahoma.² Ruiz Food Products, Inc. is a California corporation with its principal place of business in California. Plaintiff seeks to recover in excess of \$75,000 from Ruiz Food Products, Inc. Specifically, Plaintiff makes a claim for lost wages in her petition. She alleges she was discharged from her position on December 21, 2007, at a time when she was earning \$14.80 per hour, plus overtime and benefits. Even without the overtime and benefits, 40 hours per week at \$14.80 per hour, for eight months after her discharge, would amount to approximately \$21,000.00 in her claim for lost wages. In paragraph XI of her petition, Plaintiff alleges that she is entitled to recover three times her actual damages as punitive damages. Adding these to calculations alone, she is seeking over \$80,000.00 in damages. However, in paragraphs VIII and IX of the Petition, Plaintiff seeks additional damages for assault and battery and intentional infliction of emotional distress. She is clearly seeking in excess of \$75,000.00 in damages in this case.

There is complete diversity between the parties and the amount in controversy support jurisdiction in this Court under 28 U.S.C. § 1332.

V. NOTICE TO STATE COURT

Defendant, the removing party, will promptly give Plaintiff written notice of the filing of this *Notice of Removal* as required by 28 U.S.C. §1446(d). Defendant will promptly file

² Plaintiff's Petition at Paragraph III.

a copy of this *Notice of Removal* with the Clerk of the Grayson County District Court of the State of Texas, where the action is currently pending, also pursuant to 28 U.S.C. §1446(d).

VI. COUNSEL OF RECORD

The following is a list of all counsel of record:

William L. Davis, Esq. Texas Bar No. 05563800 Caroline A. Ibironke, Esq. Texas Bar No. 24050803 Jackson Lewis LLP 3811 Turtle Creek Blvd., Suite 500 Dallas, Texas 75219-4497 PH: (214) 520-2400 FX: (214) 520-2008	T Ronald R. Huff, Esq. Texas Bar No. 10185050 Attorney at Law 112 South Crockett Street Sherman, Texas 75090 PH: (903) 893-1616 FX: (903) 813-3265 and
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ATTORNEYS FOR DEFENDANT	Robert E. Richardson, Jr., Esq. Texas Bar No. 16873000 Richardson Law Firm 118 S. Crockett Street Sherman, Texas 75090 PH: (903) 893-7541 FX: (903) 893-9585
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ATTORNEYS FOR PLAINTIFF

VII. PRAYER

WHEREFORE, pursuant to 28 U.S.C. §1446, Defendant removes the case styled *Shelly Giesler v. Ruiz Food Products, Inc.*, Cause No. 08-1257-059, from the 59th District Court of the State of Texas, Grayson County, Grayson County Justice Center, 200 S. Crockett, Suite 120A, Sherman, Texas, 75090, on this 9th day of September, 2008.

Respectfully submitted,



William L. Davis, Esq.
Attorney-in-Charge
Texas Bar No. 05563800
Caroline A. Ibrinke, Esq.
Texas Bar No. 24050803
JACKSON LEWIS LLP
3811 Turtle Creek Blvd., Suite 500
Dallas, Texas 75219-4497
PH: (214) 520-2400
FX: (214) 520-2008

ATTORNEYS FOR DEFENDANT

CERTIFICATE OF SERVICE

I certify that this *Defendant's Notice of Removal* was served on the following counsel of record, via certified mail, return receipt requested, on the 9th day of September, 2008, as follows:

Ronald R. Huff
Attorney at Law
112 South Crockett Street
Sherman, Texas 75090

and

Robert E. Richardson, Jr.
Richardson Law Firm
118 S. Crockett Street
Sherman, Texas 75090



William L. Davis

NO. 08-1257-059

SHELLY GIESLER,
Plaintiff,

v.

RUIZ FOOD PRODUCTS, INC.,
Defendant.

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IN THE DISTRICT COURT

59TH JUDICIAL DISTRICT

GRAYSON COUNTY, TEXAS

DEFENDANT'S NOTICE OF REMOVAL TO FEDERAL COURT

Please take notice that Defendant has, pursuant to federal law, filed with the Clerk of the United States District Court for the Eastern District of Texas, Sherman Division, a *Notice of Removal*, a copy of which is filed with this document and attached hereto as Exhibit A, and that this removal will be promptly transmitted to all Parties pursuant to 28 U.S.C. §1446(d). This Court is respectfully requested to proceed no further in this action, unless and until such time as the action may be remanded by order of the United States District Court.

Respectfully submitted,

JACKSON LEWIS LLP
3811 Turtle Creek Blvd., Suite 500
Dallas, Texas 75219-4497
PH: (214) 520-2400
FX: (214) 520-2008

By: _____

William L. Davis, Esq.
Attorney-in-Charge
Texas Bar No. 05563800
Caroline A. Ibrinke, Esq.
Texas Bar No. 24050803

ATTORNEYS FOR DEFENDANT



CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing pleading was delivered by certified mail, return receipt requested to the following counsel of record on the 9th day of September, 2008:

Ronald R. Huff
Attorney at Law
112 South Crockett Street
Sherman, Texas 75090

and

Robert E. Richardson, Jr.
Richardson Law Firm
118 S. Crockett Street
Sherman, Texas 75090



ONE OF COUNSEL